



**Trillion Partners, Inc.
9208 Waterford Centre Blvd., Suite 150
Austin, Texas 78758**

June 28, 2010

Richard Warren
USAC, Schools and Libraries Division
Phone: 973-581-5183
E-mail: RWARREN@universalservice.org

Delivered via email

Federal Communications Commission
Attention: Gina Spade, Deputy Division Chief
Telecommunications Access Policy Division
445 12th Street SW
Washington, DC 20554

Delivered via Electronic Comments Filing System

RE: Response to USAC and Appeal to FCC: Walton County School District letter dated June 18, 2010

Dear Mr. Warren and Ms. Spade,

On behalf of the Board, investors and management team of Trillion Partners, Inc., please accept this response to the Intent to Deny Letter from USAC to Walton County School District dated June 18, 2010. Additionally, please accept this letter as a simultaneous appeal to the FCC of the Intent to Deny, requesting that all of the applications as referenced in such letter be approved for funding.

Due to the magnitude of the proposed denial and the substantial delay in the issuance of USAC's currently proposed intent to deny, Trillion and all of its affected customers are under a severe hardship and request expedited resolution of this matter.

Trillion Partners is responding to this letter because thousands of students will likely be denied crucial educational access. Trillion constructed a major broadband network in this rural portion of Florida, with its customers relying on the consistent approvals by USAC in years past. The approval of this application is needed in order to continue to support these children who rely every school day on Trillion's embedded investment of this broadband asset.

During a phone conference on June 9, 2010, Mr. Scott Barash indicated that our comments would be accepted and included as part of USAC's review of the application. This must in no way be considered a delay in the FCC's immediate consideration of this urgent appeal.

Background

Walton County School District is located in the panhandle of Florida. Trillion acquired this contract as part of an asset purchase and was not a party to the original bid process.

Response to Questions

Date: June 18, 2010

Janie Griffith
WALTON COUNTY SCHOOL DISTRICT
(850) 892-1151
Application Number(s): 564519, 605898, 648381 and 726967

Response Due Date: July 7, 2010

We are in the process of reviewing Funding Years 2008, 2009 and 2010 Form(s) 471 to ensure that they are in compliance with the rules of the Universal Service program. The Funding Request Number (FRNs) 1783183 and 1967924 will be denied for the following reasons:

Based on the documentation that you have provided, the entire FRN 1783183 (application 648381) and FRN 1967924 (application 726967) will be denied because you did not conduct a fair and open competitive bid process free from conflicts of interest. The documentation you provided indicates that throughout your contractual relationship with the service provider you have selected to provide services for these FRNs, you were offered and accepted travel and accommodation to the Visionaries in Technology Education Council (VTEC) held on June 24 – 25, 2008 along with a gift card from the service provider. These gifts show that you engaged in non-competitive bidding practices in violation of program rules. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

If the entire FRN should not be denied and you have alternative information, please provide the supporting documentation.

This letter raises several concerns. The reviewer is basing this pending denial on several inaccuracies. FRNs 1783183 and 1967924 were for a contract that was awarded on February 6, 2007. The contract date for this award is almost 5 months prior to the expense that USAC is concerned about. Also, the person that attended VTEC from Walton County was not on the bid committee to select a vendor. VTEC could not have possibly determined the outcome of the bid process that occurred almost 5 months prior, especially in light of the fact that the person that attended VTEC was not on the bid committee. Additionally, Trillion has no record of providing any employee of Walton County School District with a gift card.

Regarding Visionaries in Technology Education Counsel (“VTEC”), as provided in the letter to Mel Blackwell dated June 8, 2009, VTEC was an educational conference for existing Trillion customers after they were under contract with Trillion. This was a participant-driven conference focused on education-oriented best practices. The main goal was improving education and the application of

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technologies to achieve this goal. Guest speakers included nationally renowned speakers including a University professor and an learning technology expert, neither of whom were associated with Trillion. Each participant shared their thoughts in an open discussion forum on what they generally thought would shape education in the years to come.

Expenses associated with the VTEC conference in no way affected any competitive bidding process and only applied to existing customers who wished to discuss education issues with their peers. This conference was in full compliance with all applicable state and local procurement guidelines.

The facts provided in the letter from USAC regarding the VTEC conference are, in each instance, in full compliance with all applicable procurement laws and regulations. The FCC requires that routine business meals and expenses involved in the VTEC conference must comply with state and local guidelines, and that there are no federal guidelines that apply to E-Rate participants on this issue. Also as outlined, Trillion is aware of the Notice of Proposed Rulemaking dated May 20, 2010, soliciting public comment on a potential rule which would extend current rules for Executive Branch employees to employees of governmental entities that participate in the E-Rate program. As of this writing, not only has this new proposed rule not yet been approved, it is definitely not being proposed to apply retroactively. This means that this proposed rule did not and will not apply to the facts you describe to form the basis for the proposed denial. The FCC has proposed applying the Executive Branch guidelines to E-Rate participants because there are no federal guidelines that apply to E-Rate participants today or in the past. Furthermore, Trillion currently operates under a strict Code of Conduct which would fully comply with the FCC's proposed guideline. In all instances, the facts you describe regarding this customer did not affect the competitive bidding process and were in full compliance with all applicable competitive bidding and procurement requirements.

The amounts spent on meals or other routine business expenses were trivial and could not have possibly influenced a decision that would ultimately be made by the School Board. Furthermore, no member of the School Board or decision maker received any such expense. The fact is, Trillion invested \$1,388,867 million in capital to construct a network providing critical services with a total contract value of \$3,162,059, while the amount of the routine business meals and expenses only amounted to \$15 over a two year period prior to the bid. All expenses referenced in this letter occurred after the relevant 471 filing, which couldn't possibly have influenced the bid process, and were within state and local guidelines.

In summary, this customer's actions were in full compliance with state and local procurement guidelines in effect at the time. The currently proposed FCC rule on gifts and gratuities has not been approved and is not proposed to apply retroactively to the time period in question. The amounts of the routine business meals and expenses were trivial and were never given to decision makers. Therefore, the customer's actions did not, in any way whatsoever, improperly affect the competitive bidding process.

Trillion respectfully requests that this application be approved in full.

You have 15 days to respond to this request. Your response is due by the close of business July 7, 2010. Please reply via e-mail. Please provide complete responses and documentation to the questions

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listed above. It is important that you provide complete responses to ensure the timely review of your applications. If you do not respond, or provide incomplete responses, your funding request(s) (FRNs) may be reduced or denied, or in the case of committed FRNs subjected to commitment adjustment.

If the applicant's authorized representative completed the information in this document, please attach a copy of the letter of agency or consulting agreement between the applicant and the consultant authorizing them to act on the school or library's behalf. If you receive assistance outside of your organization in responding to this request, please indicate this in your reply.

Should you wish to cancel your Form 471 application(s), or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s). Include in any cancellation request the Form 471 application number(s) and/or funding request number(s). The cancellation request should be signed and dated and including both the name and title of the authorized individual.

If you fail to respond to this letter within 15 days, we will perform the action(s) listed above.

Thank you for your cooperation and continued support of the Universal Service Program.

Richard Warren
USAC, Schools and Libraries Division
Phone: 973-581-5183
E-mail: RWARREN@universalservice.org

Sincerely,

Trillion Partners, Inc.

Attachments:

- Trillion Account Summary and Review June 8, 2009 – Walton County School District
- Letter to Mr. Scott Barash dated June 8, 2010

cc: Catriona Ayer, USAC
Irene Flannery, FCC

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Trillion Account Summary and Review

Customer Information

Name WALTON COUNTY SCHOOL DIST
Address 145 Park Street, DeFuniak Springs, FL, 32433
Billed Entity Number (BEN) 127635
Lead Sales Representative Asset Acquisition – Sales representative prior to asset acquisition unknown
 Post Asset Acquisition – David Jolly, Chuck Browning
Customer of: Gary Gaessler No Roger Clague No Steve Davis No
(Direct Sales Communications)
Trillion/E-Rate Consultant None
Communication
Customer Status Active customer

Contract Information

| ContractNumber | Award Date | End Date | 470 Number | 470 Date | FRN Number | 471 Number |
|----------------|------------|----------|-----------------|----------|------------|------------|
| N/A | 06/17/03 | 06/30/09 | 698800000444774 | 12/19/02 | 1270092 | 457057 |

Extensions/Renewals/Upgrades

| ContractNumber | Award Date | End Date | 470 Number | 470 Date | FRN Number | 471 Number |
|----------------|------------|----------|-----------------|----------|------------|------------|
| N/A | 01/30/04 | 06/30/09 | 158108000457103 | 08/13/03 | 1157213 | 419947 |
| N/A | 01/30/04 | 06/30/09 | 158108000457103 | 08/13/03 | 1271116 | 457090 |
| n/a | 01/30/04 | 06/30/09 | 158108000457103 | 08/13/03 | 1422885 | 517179 |
| n/a | 01/31/05 | 06/30/09 | 158108000457103 | 08/13/03 | 1423023 | 517209 |
| N/A | 02/06/07 | 06/30/12 | 126390000600642 | 12/04/06 | 1557292 | 564519 |
| n/a | 02/06/07 | 06/30/12 | 126390000600642 | 12/04/06 | 1673662 | 605898 |
| n/a | 02/06/07 | 06/30/12 | 126390000600642 | 12/04/06 | 1783183 | 648381 |

Expense Summary

Governing State Florida
Business Meals In compliance with state guidelines
Gifts & Entertainment None

Customer Communications

Communications Provided **Begin Date** 8/8/2006 **End Date** 1/25/2007
Customer Communications Summary Typical customer communications (Five e-mails.)

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An Intel Capital funded company

June 8th, 2010

Mr. Scott Barash
Chief Executive Officer
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

Dear Scott,

On behalf of the Board, investors and management team of Trillion, I want to send a sincere thanks for applying additional resources to Trillion's applicants. Yet, as communicated via emails and phone calls from Ron Reich of Intel, Trillion Partners has reached a point of insolvency and imminent bankruptcy given an extended lack of funding under the E-Rate program. As referenced in the letters to the E-Rate Executive Director last January, and last month to Chairman Genachowski, Trillion has undergone enormous strain and on-going financial damages due to multi-year delays in processing in excess of \$17M in applications. USAC committed to process a minimum of 50 applications by yesterday, the 7th of June. Trillion is now aware of disposition on some of the 50 promised applications, which in some cases stretch back to 2006.

Trillion is now aware that USAC recently sent letters to at least 13 Trillion customers over the last few days, indicating intention to deny their applications. This letter details the overarching policy context and cites reasons in specific cases as to why applications in this group of 13 have been incorrectly processed after very lengthy delays. This letter is a final appeal to hopefully prevent an avoidable and catastrophic series of service disruptions. We strongly believe that a "fair and open competitive process" was not impaired by a conflict of interest, and that the regulations and rules have been misapplied and the facts misinterpreted in each of these applications. We urge that USAC immediately reconsider these specific applications and approve them for funding. If these actions are not corrected immediately, the company does not expect to have funds on Monday June 14th to make its payroll obligation and to make payment on long overdue obligations to circuit suppliers. We expect the to be forced to close its doors and to discontinue service to over 600,000 students and 22,000 school administrators. The market will be left with one less competent service provider in direct conflict with the FCC's goal of promoting a competitive environment to deliver the best broadband services to schools at the lowest cost.

Trillion has endeavored, based upon years of USAC guidance and training, to make sure that its approach is consistent with state, local and FCC procurement rules. Trillion believes that the data provided by Trillion to USAC supports this. However, it appears that USAC is basing potential denials on rules that have never been formally adopted or interpretations of data that are not consistent with the facts as provided in the documentation by the company. We are alarmed that USAC is applying potential rules retroactively to applications as far back as 2004. The results of these practices are seemingly to single out Trillion in a manner that if applied universally across all service providers would result in denial of the majority of all applications put forth for E-Rate funding to USAC.

Based upon the 13 letters received thus far, the following are policies that have been incorrectly applied.

- Gifts and other expenses that are allowable
- Consortium member approval prior to bid
- 470 related communications by a vendor
- Communications allowable by an incumbent vendor with its customer

Below we provide factual evidence that clears any suspicion of conflicts of interest or other issues that may have prevented a fair and open competitive process on the example application under review. We believe that for each and every of the 13 applications in question, that the facts support the same strict and clear compliance with all rules communicated by USAC. Each of these applications must be swiftly approved so that further misapplication of rules and unjust financial damage to company can stop immediately. For example, Trillion was recently provided a letter from USAC dated June 3, 2010 to a Trillion customer, Houston County Board of Education, that threatens denial of their E-Rate application. In this letter, the applicant, Houston County Board of Education, is told that its application for E-Rate funding will be denied in full due to a \$26 meal provided by the school district's incumbent service provider, Trillion. The letter solely points to this meal as reason for impending denial.

"Based on the documentation that you or Trillion Partners, Inc. have provided, the entire amount of FRNs 1786841, 1786824, and 1809620 will be denied because you did not conduct a fair and open competitive bid process free from conflicts of interest. The documentation you or Trillion provided indicates that you were offered and accepted valuable gifts, in the form of a meal, immediately prior to the process you conducted to select a service to provide these goods and services from the service provider you selected. This gift shows that you engaged in non-competitive bidding practices in violation of program rules. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

The gift was in the form of a meal at Pig Out BBQ 1 on January 6, 2009 in the amount of \$26.34."

This letter raises many concerns. The reviewer is basing this pending denial on several inaccuracies. As an example, FRN's 1786841 and 1786824 are continuation requests of a contract that was signed in January of 2008, a full twelve months before this meal was provided. The school district has been a customer of Trillion's since 2006, when Trillion acquired the contract from another company. How could a \$26.34 meal to a non-decision maker influence a Superintendent and the Board of Houston County to make a decision to award a contract for \$348,804 over a three year term, when the contract award occurred a full year prior to the meal?

USAC also seems to be ignoring its own guidance regarding its policy on meal expenses. In a letter from USAC to Trillion dated April 8, 2009, where USAC expresses its concern about meals and other gifts, USAC states that the applicant must comply with "all applicable state

and local procurement laws". We have done that in this instance, as well as all others. We are happy to provide any details on specific state laws if necessary. None of USAC's training materials adequately address these issues, but we have followed any and all guidelines made available.

Trillion is also aware that in the Notice of Proposed Rulemaking dated May 20, 2010, a new rule is being proposed:

"Service providers may not offer or provide gifts, including meals, to employees or board members of the applicant"

This proposed rule is based upon 47 C.F.R. §§ 1.3001, 1.3002, which governs the "Acceptance of Unconditional Gifts, Donations and Bequests" currently in place for Executive Branch Employees, not state or local employees. Trillion fully supports the proposed rulemaking. In February of 2009 and 15 months prior to the NOPR, Trillion instituted a "Trillion Code of Conduct" that prohibits Trillion employees from providing gifts of any form to any governmental employee. We believe that all vendors should be held to the same standard to which Trillion has been holding its employees for over a year. However, it is neither legal nor fair to apply this proposed rule to applicants retroactively.

It is our experience that the occasional provision of meals and entertainment is the industry standard practice engaged in by the majority of service providers. Ex post facto application of new rules to Trillion would raise questions re the legitimacy of many other service providers.

In addition to our concern that the law is being misapplied to Trillion, we have learned that a USAC employee told a Trillion customer that it would be better served by canceling the school district's funding request for Trillion services. An excerpt from this letter Trillion had received cancelling our contract to provide services is as follows:

"In conversations with USAC, we have been informed that these funding requests will be expedited if the request for E-Rate funding for Trillion services is cancelled."

This letter raises serious concerns about the fairness of the USAC review.

Consistent with USAC's corporate charter to "ensure that schools and libraries have access to affordable telecommunications and information services," this situation needs immediate correction. E-Rate funding for prior years should not be denied to applicants on the basis of retroactive application of proposed rules, misapplication of the facts or unduly burdensome audit practices. We are confident that a rigorous evaluation of the law and the facts will vindicate Trillion. However, time is of the essence. Unless these clear errors are not expeditiously corrected, we expect imminent loss of control of our company and the systems serving 600,000 students and 22,000 administrators and teachers in primarily rural and underserved areas will go dark.

Sincerely,

Trillion Partners, Inc.